IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

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WRIT PETITION NO: 30124 of 1995

Between:

G.N.PRASAD S/O.G.S.GUPTA
R/O.VENKATAGIRI NELLORE DISTRICT.

... PETITIONER

AND

A.P.STATE POLICE HOUSING CORPORATION LIMITED REP. BY ITS MANAGING DIRECTOR, DGP COMPOUND, LAKDI-KA-PUL, HYDERABAD

...RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to TO ISSUE AN APPROPRIATE WRIT, ORDER OF DIRECTION DECLARING THE PROCEEDINGS OF THE RESPONDENT HEREIN IN RC.NO.G1/125/95-96 DT.27-12-1995 AS ARBITRARY, ILLEGAL VIOLATIVE OF PRINCIPLES OF NATURAL JUSTICE APART FROM BEING VIOLATIVE OF THE PRINCIPLES OF NATURAL JUSTICE BEING VIOLATIVE OF THE FUNDAMENTAL RIGHTS GURANTED TO THE PETITIONER UNDER ARTICLES 14, 16, 21 OF THE Constitution of India AND ISSUE A CONSEQUENTIAL DIRECTION TO THE RESPONDENT NOT TO GIVE EFFECT TO THE SAME AND PASS SUCH OTHER ORDER OR ORDERS AS ARE DEEMED FIT AND PROPER IN THE CIRCUMSTANCES OF THE CASE.

Counsel for the Petitioner: MR.C.V.MOHAN REDDY

Counsel for the Respondent: MR.G.PEDDA BABU

The Court made the following:

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ORDER:

This writ petition is filed seeking an appropriate writ particularly declaring the proceedings No.G1/125/95-96 dated 27.12.1995 issued by the respondent as arbitrary, illegal and violative of principles of natural justice apart from being violative of Articles 14, 16 and 21 of the Constitution of India.

2. The case of the petitioner is that he joined the service of the respondent Corporation as a Junior Engineer in the year 1972. Subsequently, he was promoted as Deputy Executive Engineer in the year 1983 and further promoted as Executive Engineer with effect from 31.12.1992. In the cadre of Executive Engineer, he had also completed the probation by 31.12.1994, i.e., continuous service of one year within a period of two years from 31.12.1992. While so, petitioner received a charge memo dated 06.12.1995 enumerating various charges and asking him to submit his explanation within 7 days from the date of receipt of the charge memo. The petitioner submitted a detailed explanation to the charge memo on 12.12.1995 denying each and every allegation made against him. However, without considering the detailed explanation given by the petitioner, respondent, to his utter surprise, issued the impugned proceedings dated 27.12.1995 terminating his probation in the category of Executive Engineer and reverting him to the post of Deputy Executive Engineer, which is arbitrary and illegal.

3. A detailed counter affidavit has been filed by the respondent denying the allegations made by the petitioner and supporting the impugned proceedings. I*nter alia,* it is asserted that the service of the petitioner as Executive Engineer during the probation period was not satisfactory and the petitioner had committed several irregularities and illegalities during that period. With a view that the petitioner will improve his performance and efficiency, the Corporation extended his period of probation for a further period of six months with effect from 1.1.1995 in the proceedings dated 23.12.1994. In spite of that petitioner did not improve his performance and efficiency and as such, the Corporation has issued the charge

memo dated 6.12.1995 pointing out his lapses committed as Executive Engineer and after receiving the explanation the impugned proceedings were passed and therefore, the impugned proceedings does not suffer from any illegality or irregularity and does not call for interference in the hands of this Court and the writ petition is liable to be dismissed.

4. Learned counsel for the petitioner Sri C.V.Mohan Reddy strenuously contends that once the period of two years lapsed from the date of promotion of the petitioner in the category of Executive Engineer i.e., from 31.12.1992, the respondent authority has no power to terminate the probation of the petitioner in the category of Executive Engineer. Further, the impugned order passed is stigmatic and unless and until a detailed domestic enquiry was conducted, no action could have been taken against the petitioner. In fact, the issuance of very charge memo is motivating factor for the purpose of terminating the probation of the petitioner in the category of Executive Engineer.

5. Per contra, learned counsel for the respondent supported the impugned order and submitted that neither there is any illegality or irregularity committed by the respondent in passing the impugned order.

6. I have given my earnest consideration to the respective submissions made by the learned counsel, and I have gone through the impugned proceedings and other material made available on record.

7. The facts are not in dispute. The petitioner was promoted as Executive Engineer with effect from 31.12.1992 and he was put on probation. Rules 13 and 14 of the Andhra Pradesh State Police Housing Corporation Limited, Hyderabad Service Regulations deals with the probation and discharge during probation, which reads as under:

13.**PERIOD OF PROBATION:**

> The period of probation in the case of direct recruits shall be a total period of two years on duty within a continuous period of three years. In the case of promotees, the period of probation shall be a total period of one year on duty within a continuous period of two years. The appointing authority may prescribe such tests/ examinations as deemed necessary to be passed during the period of probation.
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> 14.**DISCHARGE DURING PROBATION PERIOD:**
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> During the period of probation of an employee is liable to be discharged without notice but the appointing authority may, however, communicate lapses on the part of a probationer or unsuitability of the probationer in advance of the expiry of the prescribed period of probation before action is taken to discharge his services.

8. As seen from the Rules, Rule 13 contemplates that the direct recruits shall be on probation for a total period of two years on duty within a continuous period of three years and in case of promotees, the period of probation shall be a total period of one year on duty within a continuous period of two years, whereas Rule 14 contemplates that a person's probation can be terminated (discharged) during the period of probation without any notice and the appointing authority, may, however, communicate lapses on the part of the probationer or unsuitability of the probationer in advance of the expiry of the prescribed period of probation before action is taken to discharge his services.

9. In fact, these Rules do not take care of a situation like this, where a person is promoted to a higher post and he is on probation and if during the probation period his services were not satisfactory, how his probation should be terminated. Even in the counter, it is asserted that there are no regulations in this regard. In order to adhere to the principles of natural justice, a show cause notice was issued to the petitioner and thereafter action was taken. The charge memo dated 6.12.1995 runs into five pages enumerating as many as nine charges. The petitioner submitted a detailed explanation denying each and every allegation made against him and also contemplating termination of his probation. None of those charges were dealt with in

detail except saying that the explanation submitted by the petitioner was carefully examined and found to be highly unsatisfactory. The impugned order further states that

> "The management has given from time to time sufficient opportunity to you to improve your performance as well as public image.
>
> It is regretted that despite several opportunities given to you, you have not changed your attitude and have miserably failed improving your performance as well as public image, which is clearly visible from explanation submitted by you".

Except this, nothing is stated in the impugned proceedings.

10. Admittedly, the very charge memo was issued one year after completion of two years from 31.12.1992, whereas the Rules above noted contemplate issuance of notice during probation period. The respondents allowed to lapse two years period from 31.12.1992, and it is not their case that the petitioner has not completed one year period within a continuous period of two years for the purpose of probation. Even assuming that on 1.1.1995, a memo was given extending the probation of the petitioner for a period of six months, this is also admittedly beyond the period of probation i.e., 31.12.1994. Therefore, viewing from any angle, the very proceedings initiated for the purpose of terminating the probation of the petitioner was beyond the period of probation, which is not permissible under the Rules. Further, the respondent has not conducted any detailed enquiry against such serious charges mentioned in the charge memo, except calling for an explanation. As soon as the explanation was submitted, the impugned order was passed which is stigmatic in its nature as noted above. In this regard, learned counsel for the petitioner heavily relied upon a judgment in **V.P.Ahuja Vs. State of Punjab** and invited attention of this Court to paras 3 to 6 which read as under:

> 3. This order was challenged by the appellant in the Punjab and Haryana High Court through a writ petition which was dismissed by the order dated 26th March, 1999 reading as under:

"Vide Order dated 2-12-1998, Annexure P-17 petitioner has been asked to quit, concededly during the period of probation. The impugned order is not stigmatic and nothing at all has been urged that may detract from such an order being passed during the currency of probation. Insofar as, thus, order, Annexure P-17 is concerned, we find no infirmity therein".

4. It is this order which is challenged in this appeal.

5. The observation of the High Court that -

"The impugned order is not stigmatic and nothing at all has been urged that may detract from such an order being passed during the currency of probation.".

is surprising, to say the least. The order by which the services of the appellant were terminated has already been quoted by us above. The order, ex facie, is stigmatic as also punitive. The order is founded on the ground that the appellant had failed in the performance of his duties administratively and technically. It is for this reason that the services of the appellant were terminated. As pointed out above, the order ex facie is stigmatic.

6. Learned counsel for the respondents has contended that the appellant, after appointment, was placed on probation and though the period of probation was two years, his services could be terminated at any time during the period of probation without any notice, as set out in the appointment letter. It is contended that the appellant cannot claim any right on the post on which he was appointed and being on probation, his work and conduct was all along under scrutiny and since his work was not satisfactory, his services were terminated in terms of the conditions set out in the Appointment order. This plea cannot be accepted".

11. The stigmatic remarks made in the impugned proceedings are almost similar to the one made against the petitioner in the above judgment. Once the impugned order is stigmatic, such an order could not have been passed without conducting a detailed enquiry into the matter. Such a course of action could not have been adopted by the respondent. The impugned action was initiated beyond the probation period, i.e. after 31.12.1994. It is stigmatic in its nature and tenor and also punitive and such an action could not have been taken without conducting a detailed enquiry.

12. For all the above reasons and in view of the judgment of the Apex Court, I am of the considered opinion that the impugned order passed by the respondent is arbitrary, illegal and also violative of principles of natural justice and therefore it is

liable to be set aside. Accordingly, the impugned order is set aside. In the result the Writ Petition is allowed as prayed for. No order as to costs.

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C.V.RAMULU, J

Dated: 25.03.2005

Note: Issue wire at party's cost

(B/o)

RAR

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Friday the Twenty sixth day of March Two thousand and five.

ASSISTANT REGISTRAR

To

1. Managing Director, A.P.STATE POLICE HOUSING CORPORATION LIMITED, DGP COMPOUND, LAKDI-KA-PUL, HYDERABAD

2. 2 CD copies.